

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 00-0201
Sales and Withholding Taxes-Responsible Officer
Various 1992 through 1995

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ISSUE(S)

I. **Responsible Officer Liability**– Duty to Remit Sales, Use, and Withholding Taxes

Authority: IC 6-2.5-9-3; IC 6-3-4-8; *Indiana Department of Revenue v. Safayan* (1995) 654 N.E.2nd 270.

Taxpayer protests the tax assessments.

STATEMENT OF FACTS

Taxpayer is listed as a responsible officer of RELI. On April 26, 2000 the department received a protest via FAX. In a letter dated September 13, 2000, the department asked the taxpayer to provide proof that it was not the responsible officer of RELI and on February 28, 2001 the department scheduled a hearing for March 20, 2001.

RELI filed late and “no remit” sales and withholding tax returns including several returned checks that reached warrant stages. RELI's account indicates it is in bankruptcy. The Indiana Department of Revenue timely assessed the corporation for withholding and sales taxes unpaid to the state for various tax periods. The corporation did not remit these taxes and the Indiana Department of Revenue assessed the liabilities against the taxpayer as a responsible officer of the corporation. Taxpayer protested the assessments. Taxpayer is an officer of the corporation. More facts will be provided as necessary.

I. **Responsible Officer Liability** – Duty to Remit Sales and Withholding Taxes

DISCUSSION

The proposed sales tax liability was issued under authority of IC 6-2.5-9-3 that provides as follows:

An individual who is an individual retail merchant or is an employee, officer, or member of a corporate or partnership retail merchant; and has a duty to remit state gross retail or use taxes to the department; holds those taxes in trust for the state and is personally liable for the payment of those taxes, plus any penalties and interest attributable to those taxes, to the state.

The proposed withholding taxes were assessed against Taxpayer pursuant to IC 6-3-4-8 (f), which provides that

“In the case of a corporate or partnership employer, every officer, employee, or member of such employer, who, as such officer, employee or member is under a duty to deduct and remit such taxes shall be personally liable for such taxes, penalties, and interest.”

Pursuant to *Indiana Department of Revenue v. Safayan* (1995) 654 N.E.2nd 279, page 273: “The statutory duty to remit trust taxes falls on any officer or employee who has the authority to see that they are paid.”

Taxpayer did not provide additional information regarding its liabilities nor has he made a statement that he is not the responsible officer. The majority of the assessment was for the failure to remit tax with the tax returns and returned checks that had reached the warrant stage incurring additional costs.

Taxpayer’s representative provided information indicating that taxpayer was neither an owner nor an officer of RELI prior to April 1993. The department found that the taxes assessed from returns prior to April 1993 should be removed from the responsible officer liability.

FINDING

Taxpayer’s protest is partially sustained and partially denied.